

Brian D. Glueckstein (admitted *pro hac vice*)
New York Bar No. 4227005
gluecksteinb@sullcrom.com
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3588

Cortney C. Thomas
Texas Bar No. 24075153
cort@brownfoxlaw.com
BROWN FOX PLLC
8111 Preston Road, Suite 300
Dallas, Texas 75225
Telephone: (214) 327-5000
Facsimile: (214) 327-5001

*Counsel for Mark K. Okada and
Affiliated Parties*

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

-----	X	
	:	
In re:	:	Chapter 11
	:	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	:	Case No. 19-34054-sgj11
	:	
Reorganized Debtor.	:	
	:	
-----	X	
	:	
MARC S. KIRSCHNER, AS LITIGATION	:	
TRUSTEE OF THE LITIGATION SUB-TRUST,	:	
	:	
Plaintiff,	:	
	:	Adv. Pro. No. 21-03076-sgj
v.	:	
	:	
JAMES D. DONDERO; MARK A. OKADA; SCOTT	:	
ELLINGTON; ISAAC LEVENTON; GRANT	:	
JAMES SCOTT III; FRANK WATERHOUSE;	:	

¹ The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

STRAND ADVISORS, INC.; NEXPOINT	:
ADVISORS, L.P.; HIGHLAND CAPITAL	:
MANAGEMENT FUND ADVISORS, L.P.;	:
DUGABOY INVESTMENT TRUST AND NANCY	:
DONDERO, AS TRUSTEE OF DUGABOY	:
INVESTMENT TRUST; GET GOOD TRUST AND	:
GRANT JAMES SCOTT III, AS TRUSTEE OF GET	:
GOOD TRUST; HUNTER MOUNTAIN	:
INVESTMENT TRUST; MARK & PAMELA	:
OKADA FAMILY TRUST – EXEMPT TRUST #1	:
AND LAWRENCE TONOMURA AS TRUSTEE OF	:
MARK & PAMELA OKADA FAMILY TRUST –	:
EXEMPT TRUST #1; MARK & PAMELA OKADA	:
FAMILY TRUST–EXEMPT TRUST#2 AND	:
LAWRENCE TONOMURA IN HIS CAPACITY AS	:
TRUSTEE OF MARK & PAMELA OKADA	:
FAMILY TRUST–EXEMPT TRUST #2; CLO	:
HOLDCO, LTD.; CHARITABLE DAF HOLDCO,	:
LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND	:
DALLAS FOUNDATION; RAND PE FUND I, LP,	:
SERIES 1; MASSAND CAPITAL, LLC; MASSAND	:
CAPITAL, INC.; SAS ASSET RECOVERY, LTD.;	:
AND CPCM, LLC,	:
	:
Defendants.	:
	:
-----	X

THE OKADA PARTIES’ MOTION TO DISMISS

TO THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY COURT JUDGE:

Mark K. Okada, The Mark & Pamela Okada Family Trust – Exempt Trust #1 (“MPO Trust 1”) and Lawrence Tonomura in his Capacity as Trustee, and The Mark & Pamela Okada Family Trust – Exempt Trust #2 (“MPO Trust 2”) and Lawrence Tonomura in his Capacity as Trustee (collectively, the “Okada Parties”), defendants in the above captioned adversary proceeding, hereby submit *The Okada Parties’ Motion to Dismiss* (the “Motion”), and respectfully state as follows:

Pursuant to Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, and Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, and for the reasons set forth in the accompanying *Memorandum of Law in Support of The Okada Parties’ Motion to Dismiss* and the *Appendix in Support of The Okada Parties’ Motion to Dismiss*,² filed contemporaneously herewith and all of which are incorporated herein by reference, the Okada Parties request that the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) dismiss the causes of action asserted against the Okada Parties in the Complaint (the “Claims”):

- Count I (against Mr. Okada, MPO Trust 1, and MPO Trust 2) – Avoidance and Recovery of HCMLP Distributions as Constructive Fraudulent Transfers;
- Count II (against Mr. Okada, MPO Trust 1 and MPO Trust 2) – Avoidance and Recovery of HCMLP Distributions as Intentional Fraudulent Transfers;
- Count XIV (against Mr. Okada) – Breach of Fiduciary Duty in Connection with Fraudulent Transfers and Schemes; and

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Memorandum of Law in Support of The Okada Parties’ Motion to Dismiss*.

- Count XXXV (against Mr. Okada, MPO Trust 1 and MPO Trust 2) – Disallowance or Subordination of Claims.³

WHEREFORE, the Okada Parties respectfully request that the Bankruptcy Court enter an order, substantially in the form attached hereto as Exhibit A, (i) granting the Motion; (ii) dismissing the Claims asserted against the Okada Parties; and (iii) granting the Okada Parties such other and further relief as is just and proper.

Dated: March 23, 2022
New York, New York

/s/ Brian D. Glueckstein
Brian D. Glueckstein (admitted *pro hac vice*)
New York Bar No. 4227005
gluecksteinb@sullcrom.com
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3588

Cortney C. Thomas
Texas Bar No. 24075153
cort@brownfoxlaw.com
BROWN FOX PLLC
8111 Preston Road, Suite 300
Dallas, Texas 75225
Telephone: (214) 327-5000
Facsimile: (214) 327-5001

*Counsel for Defendants Mark K. Okada,
The Mark and Pamela Okada Family Trust –
Exempt Trust #1 and Lawrence Tonomura as
Trustee, and The Mark and Pamela Okada
Family Trust – Exempt Trust #2 and
Lawrence Tonomura as Trustee*

³ Count XXXV as against Okada, MPO Trust 1 and MPO Trust 2 is moot by virtue of the Bankruptcy Court's entry of its *Order Authorizing Withdrawal of Proofs of Claim Nos. 135, 137 and 139* [Bankr. Dkt. No. 3163], permitting the consensual withdrawal, with prejudice, of the claims at issue.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 23, 2022, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof, including on the Plaintiff through its counsel of record.

/s/ Brian D. Glueckstein
Brian D. Glueckstein

EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

	X	
	:	
In re:	:	Chapter 11
	:	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	:	Case No. 19-34054-sgj11
	:	
Reorganized Debtor.	:	
	:	
	X	
	:	
MARC S. KIRSCHNER, AS LITIGATION	:	
TRUSTEE OF THE LITIGATION SUB-TRUST,	:	
	:	
Plaintiff,	:	
	:	Adv. Pro. No. 21-03076-sgj
v.	:	
	:	
JAMES D. DONDERO; MARK A. OKADA; SCOTT	:	
ELLINGTON; ISAAC LEVENTON; GRANT	:	
JAMES SCOTT III; FRANK WATERHOUSE;	:	
STRAND ADVISORS, INC.; NEXPOINT	:	
ADVISORS, L.P.; HIGHLAND CAPITAL	:	
MANAGEMENT FUND ADVISORS, L.P.;	:	
DUGABOY INVESTMENT TRUST AND NANCY	:	
DONDERO, AS TRUSTEE OF DUGABOY	:	
INVESTMENT TRUST; GET GOOD TRUST AND	:	

¹ The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

GRANT JAMES SCOTT III, AS TRUSTEE OF GET	:
GOOD TRUST; HUNTER MOUNTAIN	:
INVESTMENT TRUST; MARK & PAMELA	:
OKADA FAMILY TRUST – EXEMPT TRUST #1	:
AND LAWRENCE TONOMURA AS TRUSTEE OF	:
MARK & PAMELA OKADA FAMILY TRUST –	:
EXEMPT TRUST #1; MARK & PAMELA OKADA	:
FAMILY TRUST–EXEMPT TRUST#2 AND	:
LAWRENCE TONOMURA IN HIS CAPACITY AS	:
TRUSTEE OF MARK & PAMELA OKADA	:
FAMILY TRUST–EXEMPT TRUST #2; CLO	:
HOLDCO, LTD.; CHARITABLE DAF HOLDCO,	:
LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND	:
DALLAS FOUNDATION; RAND PE FUND I, LP,	:
SERIES 1; MASSAND CAPITAL, LLC; MASSAND	:
CAPITAL, INC.; SAS ASSET RECOVERY, LTD.;	:
AND CPCM, LLC,	:
	:
	:
Defendants.	:
	:
	:
-----	X

ORDER GRANTING THE OKADA PARTIES' MOTION TO DISMISS

Upon consideration of the *Motion of the Okada Parties to Dismiss* (the “Motion”), the *Memorandum of Law in Support of the Okada Parties’ Motion to Dismiss*, and the *Appendix in Support of the Okada Parties’ Motion to Dismiss*, any response thereto, the pleadings, and the arguments presented by the parties before this Court, the Court hereby orders that the Motion is GRANTED.

Pursuant to Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, and Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, the Court hereby dismisses:

- Count I – Avoidance and Recovery of HCMLP Distributions as Constructive Fraudulent Transfers, as against Mark K. Okada, MPO Trust 1, and MPO Trust 2;
- Count II – Avoidance and Recovery of HCMLP Distributions as Intentional Fraudulent Transfers, as against Mark K. Okada, MPO Trust 1 and MPO Trust 2;
- Count XIV – Breach of Fiduciary Duty in Connection with Fraudulent Transfers and Schemes, as against Mark K. Okada; and
- Count XXXV – Disallowance or Subordination of Claims, as against Mark K. Okada, MPO Trust 1 and MPO Trust 2.

SO ORDERED.

Dated: _____, 2022

HONORABLE STACEY G. C. JERNIGAN
UNITED STATES BANKRUPTCY JUDGE

End of Order

Proposed form of order prepared by:

Brian D. Glueckstein (admitted *pro hac vice*)

New York Bar No. 4227005

gluecksteinb@sullcrom.com

SULLIVAN & CROMWELL LLP

125 Broad Street

New York, New York 10004

Telephone: (212) 558-4000

Facsimile: (212) 558-3588

and

Cortney C. Thomas

Texas Bar No. 24075153

cort@brownfoxlaw.com

BROWN FOX PLLC

8111 Preston Road, Suite 300

Dallas, Texas 75225

Telephone: (214) 327-5000

Facsimile: (214) 327-5001

*Counsel for Defendants Mark K. Okada,
The Mark and Pamela Okada Family
Trust – Exempt Trust #1 and Lawrence
Tonomura as Trustee, and The Mark and
Pamela Okada Family Trust – Exempt
Trust #2 and Lawrence Tonomura as
Trustee*